to acquire the stock under the statutes of the United States. The court says that the corporation had no power to purchase, and therefore no liability could be imposed by virtue of the attempted purchase of the stock. Ultra vires contracts cannot form the basis of an action according to the well settled doctrine in the United States Supreme Court. Taylor on Corporations, 5th ed. §264a.

The court in the principal case reaches its result by holding that independent of the contractual rights it purported to confer, the transfer of the shares operated to transfer title to the real estate held by the company, that the title to the real property having vested in the bank it could be held liable for its share of the expenses of its management. *Cockrill* v. *Abeles*, supra. But clearly the bank got no legal title to the real estate through the mere transfer of the stock and there is no mention of any deed. Further it would seem that the equitable interest that each shareholder had in the realty was merely by virtue of his rights as partner and the bank not becoming a partner obtained no such interest. *Riddle* v. *Whitehall* (1889) 135 U. S. 621 at 634 et seq. *City of Natchez* v. *Minor* (1848) 17 Miss. 544. It would follow then that no interest in the real estate passed to the bank on which to found the liability of a joint owner and that as the interest of the pledgor in the joint stock company did not pass to the bank by its ultra vires contract it was under no liability as partner. In this event the bank is fully protected by its right as pledgee to hold, collect the income and sell; creditors still have the liability of the pledgor to rely on, and, as has been decided, have notice of the bank's rights, and the bank has not any of the onerous burdens which the ownership of the stock would carry with it. See *Robinson* v. *Southern National Bank* (1900) 180 U. S. 295.

ELECTION AS AGAINST AGENT AND UNDISCLOSED PRINCIPAL.—Whether a judgment secured by a third person against the agent of an undisclosed principal will be a bar to a subsequent action against the principal, is a question raised by a case in the United States Circuit Court of Appeals, for the Seventh Circuit. *Barrell* v. *Newby*. (C. C. A. 7th Circ., 1904). This is a point on which the authorities differ. Some hold with the principal case that a judgment against the agent concludes the matter, *Priestly* v. *Fernie* (1865) 3 H. & C. 977, while others hold that satisfaction alone will be a bar to a subsequent action. *Beymer* v. *Bonsall* (1875) 79 Penn. St. 298; *Brown* v. *Reiman* (1900) 48 App. Div. 295. It is commonly stated that the third party may hold either the principal or the agent at his election, and what constitutes an election is usually a question of fact to be determined by the jury. Mechem on Agency, § 696. Accordingly it has been held, that filing an affidavit of proof against the estate of the insolvent agent, *Curtis* v. *Williamson* (1874) L. R. 10 Q. B. 57, or even commencing suit against the agent, *Cobb* v. *Knapp* (1877) 71 N. Y. 348, is not such conclusive evidence of an election as to preclude a subsequent suit against the principal, as

a matter of law. It is said, however, that obtaining a judgment is a conclusive election, as a matter of law; but the leading English case on the subject appears to have involved no question of election at all, *Priestly* v. *Fernie,* supra, for there is nothing in the case to show that plaintiff knew of the existence of a principal until after judgment was obtained. Under such circumstances, he clearly could have exercised no election, but despite this fact, the judgment against the agent was held to close the matter. See also *Kendall* v. *Hamilton* (1879) 4 App. C. 504. The real basis of the decision seems to be that the judgment merges the cause of action, and is itself a satisfaction, just as the English courts hold it to be in the case of a judgment against one of several joint tort feasors.

If, now, we turn to those cases in which satisfaction and not the mere judgment is the essential thing, it seems also that the question of election does not enter. When a third party, with a full knowledge of all the facts, obtains a judgment against the agent, he has surely by his acts given as much expression to his intention to elect as seems ordinarily possible, and if, therefore, despite this, he is allowed to sue the principal unless he gets satisfaction, it would seem to be so, not because he has not "elected," in any reasonable meaning of that term, but because he need not, since he has a right against both the principal and the agent, which nothing short of satisfaction will destroy. It would seem that this is the real ground for the decisions in the latter class of cases, nor does any serious objection to this view appear. Since the principal receives the benefit of the transaction, there is no cause for not holding him liable. The third party should have the right to pursue not the principal or the agent—which is another way of saying he must elect —but both of them, until his claim is satisfied. Some cases have indeed allowed an action to be brought against them jointly. See *Tew* v. *Wolfsohn* (1902) 76 N. Y. Supp. 919. Any difficulties of procedure, then, that might be involved, ought to disappear under modern procedural methods. All election can mean in such cases —if it means anything at all—is that plaintiff cannot get payment of his claim from both the principal and the agent, but must be said to decide to take payment from the one only from whom in fact he has received it. See *Am. Trading Co.* v. *Wilson Sons & Co.* (1902) 74 N. Y. Supp. 718. See also *McLean* v. *Sexton* (1899) 44 App. Div. 520.

Liability of a Grantee Who Takes Land Subject to Incumbrances.—When a grantee takes land "subject to a mortgage" it is generally said that he thereby becomes bound by the mortgage and cannot thereafter attack its validity. Jones on Mortgages § 1491 et seq. This result appears to be reached by the courts with great uniformity and irrespective of the character of the defense set up by such grantee. *Fuller & Co.* v. *Hunt* (1878) 48 Ia. 163; *West* v. *Miller* (1890) 125 Ind. 70. In a recent case in Tennessee the point has again come up for decision and the orthodox result was reached. Certain land had been subject to a mort-